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09/648,906	08/25/2000	Gerald Davis Bohannon JR.	27798-00101	6971

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EXAMINER
RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
1771	3

DATE MAILED: 04/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Keep in case

2d

Office Action Summary	Application No. 09/648,906	Applicant(s) Gerald Davis Bohannon, Jr.
	Examiner Ula Corinna Ruddock	Art Unit 1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Aug 25, 2000 .

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-18 is/are pending in the application.

4a) Of the above, claim(s) 10-18 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-9 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

19) ☐ Notice of Informal Patent Application (PTO-152)

20) ☐ Other:

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

   I. Claims 1-9, drawn to an erosion control blanket, classified in class 442, subclass 32.

   II. Claims 10-18, drawn to a method of making an erosion control blanket, classified in class 19, subclass 66.1.

2. The inventions are distinct, each from the other because of the following reasons: Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be made by another and materially different process, i.e. by first crimping and cutting the fiber filler and then coextruding the nettings and the filler simultaneously through a die.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Stanley Moore on February 19, 2002, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9. Affirmation

of this election must be made by applicant in replying to this Office action. Claims 10-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statement

5. The information disclosure statement filed December 4, 2000, has been considered.

Claim Objections

6. Claim 1 is objected to because of the following informalities: in line 7, the word "thee" is misspelled. It appears as though Applicant meant three. Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Romanek et al. (US 5,358,356) in view of Jacobsen, Jr. et al. (US 5,330,828) and Molnar et al. (US 5,507,845). Romanek et al. disclose an erosion control mat formed of a scrim having a lightweight web secured thereto (abstract). The lightweight web is preferably made up of unconsolidated fibers which means the fibers are not secured to one another (col 3, ln 25-27) and

would inherently have some thickness . Applicant's filler is made of randomly dispersed loose fiber fill (page 10, line 1 of the present Application). Therefore, it should be noted that the Examiner is equating Romanek's lightweight web to the three-dimensional synthetic filler of the present Application. The lightweight web can be made of polyester fibers (col 3, ln 3-6). With regard to claim 9 of the present Application, UV stabilizers may be added to the materials making up the scrim and the web (col 4, ln 2-5). The final composite fabric formed of the scrim and lightweight web can be colored (col 3, ln 64-66). Romanek et al. fail to teach a second netting material, that the polyester fibers are crimped, and that the polyester is substantially recycled polyethylene terephthalate made of green soda bottle material. Romanek et al. also fail to teach that the filler material has a resistance to compression value of about 0.210 to about 0.285 psi/gram of fibers and a percent recovery value of at least 90% following the application of a 0.5 psi compressive load for a period of 5 minutes.

Jacobsen, Jr. et al. (US 5,330,828) disclose a fiber mat which can be used as an erosion control device (col 1, ln 10-11). The fibrous mat product can be produced with netting on one or both sides (col 7, ln 52-54). It would have been obvious to one having ordinary skill in the art to have employed the teaching of a second netting as disclosed by Jacobsen, Jr. et al. on the erosion control mat of Romanek et al., motivated by the desire to obtain a mat with increased product strength.

Molnar et al. disclose plant sod mats that are especially effective for soil stabilization (abstract). The sod mat comprises a sod reinforcement and stable discrete fibers (col 3, ln 57-59). The discrete fibers can be polyethylene terephthalate and can also be crimped (col 13, ln 55-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used Molnar's crimped polyethylene terephthalate fibers in the erosion control mat of Romanek et al., motivated by the desire to obtain an erosion control mat with increased root entanglement.

With regard to claims 4 and 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used recycled polyethylene terephthalate in the erosion control mat of Romanek et al., Jacobsen, Jr. et al., and Molnar et al., motivated by the desire to eliminate landfill waste. Furthermore, while Romanek et al. disclose that the scrim and lightweight web can be colored (col 3, ln 64-66), the reference fails to disclose using recycled polyethylene terephthalate made of green soda bottle material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used recycled polyethylene terephthalate made of green soda bottle material in the erosion control mat of Romanek et al., Jacobsen, Jr. et al., and Molnar et al., motivated by the desire to eliminate landfill waste.

With regard to claims 6 and 7, Romanek et al., Jacobsen, Jr. et al., and Molnar et al. also fail to disclose that the filler material has a resistance to compression value of about 0.210 to about 0.285 psi/gram of fibers and a percent recovery value of at least 90% following the application of a 0.5 psi compressive load for a period of 5 minutes. Inherently, an erosion control mat as shown by Romanek et al., Jacobsen, Jr. et al., and Molnar et al. would have the same compression value and percent recovery value as claimed in the present Application, because both structures use polyester fibers that are crimped at the same rate. In addition, the presently claimed property of a filler material that has a resistance to compression value of about 0.210 to about 0.285 psi/gram of fibers and a percent recovery value of at least 90% following the application of a 0.5 psi compressive load for a period of 5 minutes, would have been present once the Romanek et al., Jacobsen, Jr. et al., and Molnar et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Romanek et al. (US 5,358,356) in view of Jacobsen, Jr. et al. (US 5,330,828), and Molnar et al. (US 5,507,845), as applied to claims 1-7 and 9 above, and further in view of Fletemier et al. (US 6,156,682). Romanek et al., Jacobsen, Jr. et al., and Molnar et al. disclose the claimed invention except for the teaching that the polyester fibers are crimped at a rate of 1.0 to about 3.0 crimps per inch. Fletemier et al. disclose a laminate structure comprising polyethylene terephthalate fibers that are crimped at a rate

of from 1 to 30 crimps per inch (col 3, ln 64-67 to col 4, ln 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the crimping rate as disclosed by Fletemier et al. on the crimped fibers of Molnar et al. in the erosion control mat of Romanek et al. and Jacobsen, Jr. et al., motivated by the desire to obtain an erosion control mat with increased root entanglement and improved aeration.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is (703) 305-0066. The Examiner can normally be reached Monday through Thursday from 6:30 AM to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor Terrel Morris can be reached at (703) 308-2414.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-2351.

Ula C. Ruddock
Patent Examiner
Art Unit 1771
April 8, 2002

Ula Ruddock